IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9512 of 2003

For Approval and Signature:

HON'BLE MR JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgement ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copyu of the judgement ?

4 Whether this case involves a substantial question of law as to the interpretation of the constituition of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judgte ?

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LAXMIBEN MUNNAPRASAD KESHARI & 3 - Petitioner(s)

Versus

LIFE INSURANCE CORPORATION OF INDIA & 2 - Respondent(s)

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Appearance :

MS LILU K BHAYAfor Petitioner No(s).: 1,2,3.

MR HM BHAGAT for Respondent No(s).: 1.

SERVED BY AFFIX.-(R) for Respondent No(s).: 2.

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CORAM:HON'BLE MR JUSTICE DN PATEL

Date : 15/06/2005

ORAL JUDGMENT

The present petition has been preferred under Article 226 and 227 of the Constitution of India seeking a writ, order or direction, directing the Life Insurance Corporation of India to make the payment of commission amount payable to the deceased as agent under Agency Code No.340832 as the legal heirs of the deceased.

2. Learned counsel appearing for the petitioner submitted that the petitioner is a widow of the deceased, who was an agent with respondent no.1 and was working under the Agency Code No.340832. The petitioner being a widow of the agent is entitled to the commission, which was payable by respondent no.1 to the deceased husband of the present petitioner. It is submitted by the learned counsel appearing for the petitioner that the application was preferred by the petitioner for getting the commission on behalf of the deceased husband but the respondent no.1 has refused vide communication dated 22nd July,2002 on the ground that the commission is payable to Smt.Sonadevi D. Kesari, who is the mother of the deceased, who is the nominee of the deceased agent Shri M.D. Kesari as per Agency Regulation Act,1972. The learned Counsel for the petitioner submitted that the name of the nominee has to be mentioned by the deceased husband of the petitioner as per the Agency Regulation Act,1972. This is advantageous only for the purpose of processing the payment of the commission in case of death of the agent. Mere nomination can never oust the legal rights of heirs of the deceased. The petitioner being widow of the deceased is entitled to commission, which was payable by the the Life Insurance Corporation of India to the deceased husband. The petitioner is having two children and, therefore, the learned counsel appearing for the petitioner has submitted that out of total amount of commission, they are claiming only 3/4 of the commission whereas remaining 1/4 of the commission may be paid to the mother of the deceased. Learned Counsel appearing for the petitioner has also relied upon the judgment delivered by this Court in **Special Civil Application No.12446/2000 dated 5th November,2001** as well as upon the judgment delivered by the Hon'ble Supreme

Court in the case of **Shri Vishin N. Khanchandani & Another V/s. Vidya Lachmandas Khanchandani & Another**, reported in **JT 2000(9) Supreme Court 321** and judgment delivered by the Hon'ble Supreme Court between **Smt.Sarbati Devi & Another V/s. Smt.Usha Devi**, reported in **A.I.R. 1984 SC 346.** It is further submitted by the learned counsel appearing for the petitioner that the legal heirs of the deceased can claim the commission in accordance with law of Succession. So far as nomination is concerned, it is only for the purpose of processing the application for payment of the commission. Nomination of the mother of deceased as per Agency Regulation Act,1972 can never take away the right conferred on the legal heirs of the deceased under the Hindu Succession Act. The widow and two children are entitled to their shares in the commission payable to the deceased husband of the petitioner and, therefore, the order passed by the respondent no.1 dated 22nd July,2002 deserves to be quashed and set aside.

3. I have heard the learned counsel appearing for the respondent no.1, who has submitted that there nomination of the mother of the deceased as per the Agency Regulation Act,1972, therefore, the present petitioner and two children are not entitled to the commission, which is payable by the respondent no.1 to the deceased husband of the petitioner. The order passed by the respondent no.1 dated 22nd July,2002 is legal and inconsonance and may not be interfered by this Court.

4. Though the respondent no.2 is served, no body appears on behalf of the respondent no.2.

5. Having heard the learned counsel and looking to the facts and

circumstances of the case, the decision of the respondent no.1 communicated to the petitioner dated 22nd July,2002, which is at Annexure “B” is hereby quashed and set aside especially for the following reasons :

(i) The present petitioner is widow of the deceased husband, who was agent of the Life Insurance Corporation of India. The accumulated amount of the commission was payable to the deceased husband of the petitioner. The petitioner being widow of the deceased husband is entitled to the commission payable by the respondent no.1.

(ii) Merely because the nomination by the deceased husband of the petitioner as per Agency Regulation Act,1972 reveals the name of the mother of the deceased can never oust the legitimate claim of the petitioner and her two children for getting commission being legal heirs of the deceased as the the Hindu Succession Act. The nomination, if at all facilitates in processing the application for getting the commission payable by respondent no.1. The nomination it can never be an exception to the law of succession. The legal heirs of the deceased if are entitled to get the commission as per the law of succession bear nomination can never take away right of legal heirs of the deceased. In the present case, the petitioner is widow and having two children, they are entitled to their shares in commission payable by respondent no.1 to the deceased agent, who was a husband of the petitioner.

(iii) As per the decision rendered by Hon'ble Supreme Court between **Smt.Sarbati Devi & Another V/s. Smt.Usha Devi**, reported in **A.I.R. 1984 SC 346**, especially in para-12 thereof, which reads as under:

"Moreover there is one other strong circumstance in this case which dissuades us from taking a view contrary to the decisions of all other High Courts and accepting the view expressed by the Delhi High Court in the two recent judgments delivered in the year 1978 and in the year 1982. The Act has been in force from the year 1938 and all along almost all the High Courts in India have taken the view that a mere nomination effected under section 39 does not deprive theheirs of their rights in the amount payable under a life insurance policy. Yet parliament has not chosen to make any amendment to the Act. In such a situation unless there are strong and compelling reasons to hold that all these decisions are wholly erroneous, the Court should be slow to take a different view. The reasons given by the Delhi High Court are unconvincing. We, therefore, hold that thejudgments of the Delhi High Court in Fauja Singh's case (AIR 1978 Delhi 276) (supra) and in Mrs. Uma Sehgal's case (AIR 1982 Delhi 36) (supra) do not lay down the law correctly, They are, therefore, overruled. We approve the views expressed by the other High Courts on the meaning of section 39 of the Act and hold that a mere nomination made under section 39 of the Act does not have the effect to conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which isauthorized to receive the amount, on thepayment of which the insurer gets a valid discharge of itsliability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them."

The aforesaid ratio laid down by the Hon'ble Supreme Court make it clear that the nomination only indicates the hand which isauthorized to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them. Thus, in present case also, the nomination of the mother

by the deceased agent cannot take away the rights of the legal heirs of the deceased, if they are otherwise entitled to get their shares in accordance with law of succession governing them. Similarly, in case decided by the Hon'ble Supreme Court between **Shri Vishin N. Khanchandani & Anr. V/s. Vidya Lachmandas Khanchandani & Anr.,** reported in **2000(5) Supreme 574**, it has been held by Hon'ble Supreme Court that the legal heirs are entitled to claim the amount even though there is no nomination by the deceased, if they are otherwise entitled to get the share from the property of the deceased as per the succession law applicable to them. As per the judgment delivered by this Court in Special Civil Application No.12446/2000 dated 5th November,2002, this Court has also allowed the amount to be claimed by the legal heirs of the deceased though they were not a nominees of the deceased.

6. In view of the aforesaid reasons and proposition of law, I hereby direct the respondent no.1 to make the payment of the 3/4 of total commission payable to the deceased agent under the Agency Code No.340832 out of which 1/4 of the total commission amount shall be paid to the petitioner i.e. Widow of the deceased after proper verification and remaining amount 1/4, each, for two minor children shall be invested in any nationalized bank in the name of two minor by separate deposit initially for a period of five years to be renewed from time to time till they attain majority. It is made clear that the petitioner shall not allowed to withdraw the amount, which is deposited in the name of minor nor shall be entitled to crate any charge thereupon. However, the periodical interest accrued thereon shall be paid to the petitioner for the maintenance of her minor children. The respondent no.1 shall carry out the aforesaid direction within a period of 6 months

from today.

7. Rule made absolute as no order to costs.

(D.N. PATEL, J)

(dipti)